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This paper deals with the legal aspects of student rights and of the various forms of expression (riots, demonstrations, speeches, and writings) pertinent to student activism, militancy, or agitation. It cites examples of such activities, along with decisions handed down by school authorities and local, state, and federal courts. The most recent case reviewed is Barker v. Hardway in the spring of 1968. Following the trends indicated by these decisions, the author offers guidelines to college administrators. They cover general principles such as avoidance of ambiguity or inconsistency, wide dissemination of information on the college rules, the extent of authority over behavior on or off the campus, the distinction between substantive and procedural due process, and the proper conduct of formal and informal hearings. Recommendations include: (1) a spirit of reason on the part of all concerned, (2) the formulation and enforcement of just rules and regulations for freedom of expression on campus, and (3) the channelling of student dissent into constructive activism, leading to increased academic freedom for all. (HH)

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STUDENT ACTIVISM AND THE JUNIOR COLLEGE ADMINISTRATOR:

JUDICIAL GUIDELINES

JC 680 503

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STUDENT ACTIVISM AND THE JUNIOR COLLEGE ADMINISTRATOR:

JUDICIAL GUIDELINES

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INTRODUCTION

Clearinghouse topical papers are issued periodically on subjects of interest to people in the junior college field. The first two papers in the series presented research designs by means of which student attitudes can be assessed. Future research models will offer procedures for measuring student learning. All topical papers are available from the Clearinghouse on request.

This paper, the third in the series, takes a different turn. Rather than a research design, it presents findings and recommendations of a study on student rights. Guidelines for administrators are offered along with a review of litigation in the area. For purposes of this paper, the terms, "activism," "militancy" and "agitation" are used interchangeably to refer to actions taken by students which bring them into conflict with college or civil authorities.

The Clearinghouse is issuing this paper now because the topic is timely. In addition, a monograph to be published in the Clearinghouse/AAJC Monograph Series in spring, 1969, will deal with student activism. We hope these services help shed light on this important issue.

Dale Gaddy is a member of the Clearinghouse staff. Our thanks to him for preparing the paper and to the U.S. Office of Education for making possible its production.

Arthur M. Cohen
Principal Investigator and Director
ERIC Clearinghouse for Junior
College Information

TOPICAL PAPERS

1) A Developmental Research Plan for Junior College Remedial Education

2) A Developmental Research Plan for Junior College Remedial Education
Number 2: Attitude Assessment

3) Student Activism and the Junior College Administrator: Judicial Guidelines

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STUDENT ACTIVISM AND THE JUNIOR COLLEGE ADMINISTRATOR:

JUDICIAL GUIDELINES

Student activism in the 1960's has grown to unprecedented proportions, culminating during the turbulent spring semester of 1968 in the virtual takeover of Columbia University and in serious outbreaks at such other institutions as Northwestern, Howard, Stanford, Southern Illinois, and Princeton, to name but a few [46:38-40]. In fact, according to a United States National Student Association survey [40:5], released in the autumn of 1968, 221 demonstrations (not counting Columbia's) occurred on 101 American campuses during the last half of the 1967-68 school year. The survey indicated that 38,911 students participated in the demonstrations, a representation of 2.6 per cent of the student enrollments at the 101 institutions.

Reports of increased student militancy in American secondary education suggest the magnitude of this development [26:36-38]. Just as the movement has blanketed many of the major universities of the nation and is now extending vertically to secondary education, so it has moved horizontally to junior colleges* and other kinds of post-secondary institutions. There is no evidence to suggest it will subside in the near future.

Although a body of literature has been built regarding the phenomenon from points of view of sociologists, psychologists, political scientists,

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*The term junior college, as used in this paper, refers to all post-secondary institutions offering a two-year program, including vocational and technical curriculums as well as college-parallel curriculums.

and others, rarely has student activism been treated from the legal point of view. Accordingly, this paper deals with court cases pertaining to student rights and administrative responses to student activism. It is intended as a guideline for the junior college administrator who must contend with students who participate in demonstrations, speeches, and other forms of overt expression.

The paper is based primarily on a review of relevant court cases in the United States that reached at least the appellate courts of the various states and of the federal judiciary. Citations were selected from the American Digest System, American Law Reports Annotated, the National Reporter System, and other legal bibliographical aids. Secondarily, the paper includes supportive statements from a review of the literature. References were obtained from Education Index, Reader's Guide to Periodical Literature, Index to Legal Periodicals, Index to Periodical Articles Related to Law, Review of Educational Research, Encyclopedia of Educational Research, Dissertation Abstracts, and Research Studies in Education.

In addition to the introduction, the paper presents (1) a brief history of the student rights movement, (2) court cases and selected references from the literature, and (3) procedures for administrative action.

I. THE STUDENT RIGHTS MOVEMENT

Only since World War II have college students, student organizations, and other segments of the higher education complex begun agitating in large numbers for the recognition of certain academic rights, rights involving the freedom to learn as well as the freedom to be taught. During the global

conflict of the 1940's, it became obvious as never before that the security and development of the nation rested heavily on the shoulders of academia. Hence it followed that the pursuit of education beyond high school became a heralded legal right -- that is, for those who were intellectually capable of pursuing post-secondary education -- a right, and not merely a privilege. Whereas the courts once refused to grant relief to students on the grounds that (1) attendance at an educational institution is a "gift of civilization" [23:830] and that a student must abide by all conditions imposed thereby, (2) attendance at a private institution excludes a student from some of the safeguards of the Constitution [4], and (3) the principle of in loco parentis made it avisable for courts to refrain from interfering with the discipline of students [15, 24], they recently have shifted their interpretations of student-institutional conflicts. Regarding the first two grounds, the courts since 1960 have said that education is "vital and, indeed, basic to civilized society" [7:157] and is "an interest of almost incalculable value" [20:174], and have recognized that private conduct (in a case growing out of a segregated public park incident) "may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action" [12].

The principle of in loco parentis has faded from the realm of higher education, not as a result of judicial declaration, but as a result of disuse. The irrelevance of in loco parentis to the college sphere has been increasingly recognized in the 1960's, as reflected by Commager:

> The principle of in loco parentis was doubtless suitable in an earlier era, when boys went to college at the age of thirteen or fourteen; it is a bit ridiculous in a society where most students are mature enough to marry and raise families [30:13-14].

Elsewhere, Van Alstyne observes that

> The jettisoning of in loco parentis was . . . long overdue . . . For one thing, the mean age of American college students is more than 21 years and there are, in fact, more students over the age of 30 than younger than the age of 18 . . . For another thing, it is unrealistic to assume that relatively impersonal and large-scale institutions can act in each case with the same degree of solicitous concern as a parent reflects in the intimacy of his home [29:3].

Aside from these developments, students have become more voluble on issues of concern to them during the last decade. Brubacher attributes this to the civil rights movement and to the Vietnam war [27:62]. Kauffman attributes the recent emphasis on student academic rights and freedom to the following:

1. A gradual loss of personal contact between students and faculty outside the classroom

2. A recent growth and acceptance of nonviolent social action "as a legitimate and successful weapon against 'bad' practices of 'bad' laws" and

3. A postwar period of "general prosperity, mobility, and redefinition of values," which brought to American colleges and universities "many young people who have been free of all but a minimum of family or community restraints" and who are beyond their age group twenty years ago in terms of parental control and sophistication [36:360].

Writing as an associate justice of the United States Supreme Court, Abe Fortas lists the following factors that have contributed to the youth revolution:

> ...the affluence of our society and the resulting removal of the pressure to prepare oneself for economic survival; the deterioration of the family unit; the increasing involvement of universities and their faculties with non-teaching interests; the disruptive shock of the atom bomb, which gave a new uncertainty and instability to life; the prospect that their lives

> will be interrupted by compulsory military service; the opposition to the war in Vietnam; the shock of discovering that our national pride and progress concealed the misery and degradation in which Negroes and the poor were living; disillusionment with the standards of the older generation; the new awareness of the wretched state of most of the world's people which came in with the end of colonialism; and the example of Negroes in this country and of the people of Africa and Asia, who by individual and group effort, courage and organizations have fought and sometimes won heroic battles [31:5].

Kristol, on the other hand, calls the revolution more apolitical than political. He writes:

> One thing is fairly clear: the teach-ins, the sit-ins, the lay-downs, the mass picketing, and all the rest are not <u>merely</u> about Vietnam, or civil rights, or the size of classes at Berkeley, or the recognition of Red China. They are about these issues surely, and most sincerely. But there is, transparently, a passion behind the protests that refuses to be satisfied by the various topics which incite it. This passion reaches far beyond politics, as we ordinarily understand that term. Anyone who believes the turbulence will subside once we reach a settlement in Vietnam is in for a rude surprise. Similarly, anyone who thinks of present-day campus radicalism as a kind of over-zealous political liberalism, whose extremism derives from nothing more than youthful high spirits, is deceiving himself. What we are witnessing is an event <u>in</u> American politics, but not <u>of</u> it. [Emphasis in the original.] [50:4-5]

From time to time various national organizations (representing students, faculty, administration, and even groups outside the field of education) have launched efforts to achieve student rights -- efforts that have added significantly to the momentum of the student rights movement. The most pertinent of these has been the "Joint Statement on Rights and Freedoms of Students" [35:365-368] (the text of which is appended to this paper), drafted in 1967. Ten national organizations were involved either directly or indirectly in

its formulation: the American Association of University Professors, the United States National Student Association, the Association of American Colleges, the National Association of Student Personnel Administrators, the National Association of Women Deans and Counselors, the American Council on Education, the Association of American Universities, the Association for Higher Education, the Association of State Colleges and Universities, and the American College Personnel Association [38:38]. The "Joint Statement" (as it will be referred to hereafter), consists of a preamble and six major sections pertaining to (1) the freedom of access to higher education (admission policies), (2) freedom in the classroom (expression, academic evaluation, and disclosure of information regarding ability and character of students), (3) student records (contents of transcripts and access thereto), (4) freedom on the campus (association, inquiry and expression, institutional government, and publications), (5) off-campus freedom (citizenship and civil law), and (6) standards in disciplinary proceedings (standards of conduct for students, investigation of student conduct, status of student pending final action, and hearing committee procedures).

With the courts more receptive to student pleas in litigious proceedings involving institutional disciplinary matters, with the concerted efforts of national organizations on behalf of student rights, and with the more frequent and widespread occurrence of student unrest, junior college administrators can ill afford a "business as usual" attitude. Answers must be found to such questions as: (1) Do students have a legal right to express ideas and beliefs? (2) If so, what modes of expression are acceptable? and (3) What controls, in the area of student expression, may administrators legally and reasonably place on students? These and related topics are presented below.

II. STUDENT EXPRESSION

If students are to experience the freedom to learn in its pristine form, they must be free to investigate and inquire about any subject of interest to them, individually or collectively, publicly or privately [35:365-368]. Such is the basis of a democracy, particularly in the institution of society that is expected to propagate democratic ideals. Without the freedom to express one's ideas and beliefs, to probe an unlimited range of topics, and to listen to the expressions of others, a college student's education becomes stifled, even stagnated. According to White,

> These concepts [the principles of free thought and free speech] particulary are important to the college community, where the search for knowledge must be unencumbered and the spirit of free inquiry must prevail. The vitality of a democratic society demands that both professors and students be allowed to follow unfettered any avenue of knowledge and to discuss any idea or concept they think important. Indeed, teachers should encourage students to think deeply, broadly, and critically and to be persistent in the search for truth. Only in an atmosphere of intellectual freedom can students prepare themselves for the enormous responsibilities of national and world citizenship . . . . [47:263]

No less significant is the need for the college administrator to be concerned about the freedom of students to learn through expression. As the action agent in the educational bureaucracy, he is in the best position, if not under actual obligation, to lead those who would defend the freedom of expression as a "student right." Yet the concerned administrator, faced with the dilemma of nurturing an educational atmosphere while trying to maintain proper decorum in campus life, characteristically guards against the liberalization of student affairs. For the administrator -- especially with respect to his governing board -- the value of all the progressive

steps taken toward the development of an "unencumbered atmosphere of intellectual freedom" can be eradicated by one riot, however minor the disturbance might be. Given the alternatives, most administrators would tend to pursue a conservative course.

Such conservatism notwithstanding, administrative leadership in the development of student academic freedom is imperative in view of recent litigation. Since 1960, the courts have ruled on matters pertaining to campus demonstrations, demonstrations in the outer community, student speeches, guest speakers on campus, and student publications, as well as on the matter of conducting a fair investigation of student activities suspected of infringing on legitimate policies and regulations of the college. Pressure by the courts is thus being exerted on college officials to see that the rights of students are not violated.

The Right to Riot?

Student expression can materialize in various forms. Informal discussions, student assemblages, and writings in student publications are three common kinds of expression. And, when emotions run high, the expression at times bursts into riotous conduct. By the time the latter occurs, it is often too late for constructive administrative leadership. What, then, are students legally entitled to do in terms of expressing ideas? What limitations have the courts placed on this right?

Demonstrations

During the early days of the "freedom rides" and "sit-ins," the act of demonstrating came to be regarded as a socially acceptable means of expression. With the scanning lens of the television news camera focused on them,

demonstrators en masse began expressing their discontent in a manner that often articulated their causes more effectively than the most effective, articulate speakers of by-gone decades. Realizing the successes of civil rights activists in particular, college students soon joined in the demonstrating and eventually organized demonstrations of their own -- not only for civil rights matters but for other causes as well. An accepted way of life for the present-day collegian, this philosophy is reflected in the words of a freshman (speaking at the beginning of the 1968-69 school year): "No one important seems to want to listen to us unless we make the front pages -- and that seems to mean demonstrations" [28:65].

According to Williamson, demonstrating is a legal right of students both on and off campus. "This freedom is pretty well established in most institutions . . . ," he states. "It has become almost traditional that students may organize to demonstrate for causes of their own choosing" [48:480].

Furthermore, Williamson postulates that it is a function of the university to teach its students how to demonstrate in appropriate ways. Otherwise, he opines, professional demonstrators will come onto the campus to perform this task. "I certainly do not want to turn over that opportunity to the professional agitator so that he teaches students his techniques, which may not be appropriate to the academic community," Williamson writes [48:480].

A less condoning view is taken by Sherry, who claims that

> Conduct involving rowdiness, rioting, the destruction of property, or the reckless and unjustifiable disturbance of the public order on or off campus is indefensible . . . Those who engage in such behavior have no right either to immunity or special consideration because of their affiliation with the university. Ordinarily they

> are subject to the normal controls of the criminal law and in situations in which such behavior also trenches upon the academic interests of the university, academic disciplinary measures may properly be taken [42:38].

Sherry adds, however, that academic sanctions against dissenting conduct are not within the university's jurisdiction and that any attempt by an institution to control acts of dissent "degrades the university and perverts its purpose" [42:38].

Writing when he was Attorney General of the United States, Katzenbach viewed demonstrations on campus as perilous, in that they can become an instrument of coercion rather than persuasion. Noting that student demonstrators have modeled their techniques to a large extent on the Negro "revolution" in civil rights, especially since 1960, Katzenbach distinguishes between persuasion and coercion as follows:

> The goal of the Negro must be to seek to change an entire political system. The goal of the student is to seek to influence a specific decision or policy. The Negro, without access to any of the democratic forms of expression, has had little choice but to demonstrate. The student, whether he objects to conformity or to government policy in Vietnam, has a range of alternatives.
>
> It is not as though students are foreclosed from effective communication with faculty or administration. It is not as though students are denied expression through campus organizations or newspapers. Or, <u>if</u> they are, it is not as though they were denied recourse to their parents or the community at large. Their dissent, no matter how bitter or extreme, is welcome. It may contribute to their goal of influencing decisions. But at the point that it becomes coercive -- when students lie down on the tracks to block a troop train -- protest changes from essential ingredient to something alien to the liberal tradition. Efforts to coerce are wrong in principle and ineffective in practice. [Emphasis in the original.] [49:303]

The "Joint Statement" proposes that as long as students are orderly in their support of causes -- as long as they do not disrupt "the regular and essential operation of the institution" -- they should be free to express themselves and/or to demonstrate [35:366-367]. "At the same time," continues the statement, "it should be made clear to the academic and the larger community that in their public expressions or demonstrations students or student organizations speak only for themselves" [35:367].

On eleven occasions, adjudication of the right of students to demonstrate has been recorded by American courts. Although four of the cases were decided on procedural rather than substantive grounds [7, 8, 11, 20], the remaining cases have been decided on the substance of the student acts and thereby delineate the courts' interpretations of student demonstrations.

Twice in 1967 and four times in 1968, courts were called on to decide issues involving demonstrations on campus. First was the case of Green v. Howard [16]. For their participation in a series of campus disturbances (including the disruption of an address being delivered by a guest speaker), several students at Howard University were denied readmission to the institution for the following academic year and a number of faculty members were informed that their staff appointments would not be renewed. Although the central issue in subsequent litigation was the legality or illegality of campus demonstrations, the ruling tribunal held that a private university such as Howard was not subject to the provisions of the federal constitution, despite the fact that it received financial assistance from the federal government.

Three days later, another court forthrightly came to grips with the issue of campus demonstrations. In Hammond v. South Carolina State College

[17] it was announced that students had no less a right to demonstrate on the campus of a state college than on the grounds of a state courthouse. The decision rested, in part, on the Edwards v. South Carolina decision [9] (infra).

During the first four months of 1968, four decisions relating to campus demonstrations were rendered. On January 18, a federal district court upheld university-imposed suspensions of three students who had instigated and participated in a series of campus disturbances at Tennessee A. and I. State University the preceding year [19]. According to this ruling, a college may prohibit acts calculated to undermine school discipline and the institutional authorities may legally punish the offenders. Furthermore, the court declared that an indefinite suspension does not constitute a deprivation of First Amendment rights.

Early in the 1967-68 school year, a large number of students prevented Central Intelligence Agency recruiters from entering the Placement Service at the University of Colorado. Consequently, disciplinary action was taken against twenty-two of the demonstrators following a full hearing by the University Discipline Committee. Later, noting that college administrators must provide for freedom of movement on the campus (including the ingress and egress to the institution's physical facilities), a federal district court recognized as a university right the kind of disciplinary action taken by the University of Colorado in this instance. The court, in upholding the university's action, said:

> We do not subscribe to the notion that a citizen surrenders his civil rights upon enrollment as a student in a university . . . As a corollary to this, enrollment does not give him a right to im-

> munity nor special consideration, and certainly it does not give him the right to violate the constitutional rights of others [3:286].

Following suspension of several students from the all-Negro Grambling College (Louisiana), legal action was initiated that reached a federal district court in March 1968 [25]. The preceding autumn, a group of 100 to 150 students known as the "Informers," participated in a series of campus demonstrations that included the barricading of campus buildings. Subsequently, twenty-nine of the demonstrators were expelled. Reviewing the college's action, a judicial body declared, ". . . blocking of the Administration Building was clearly outside the scope of protection afforded by the First Amendment" [25:763]. And with reference to the contention that the students had been discriminated against by college officials, the court observed that

> ...college officials are not relegated to dismissal of an entire student body, or a large portion thereof, in order to stop illegal activity and restore order on their campus, especially when the instigators or leaders of such activity can be definitely identified and removed . . . . [25:767]

Another United States District Court heard the case of Barker v. Hardway [1] during the spring of 1968. The latest one reviewed for this study, the case grew out of a disturbance at a football game at Bluefield State College (West Virginia) the previous autumn. Among other acts, student demonstrators forced the college president to leave the athletic event under police escort. (Two policemen were struck by rocks during the melee.)

Less than a week later, ten of the students were notified that they had been suspended by the college. The students then launched court action. Judge Christie, speaking for the court, declared that the method of demon-

strating on the campus was unjustified on the part of the students. The judge added:

> I have failed to find any case saying that the right of free speech and peaceful assembly carries with it the right to verbally abuse another or to deprive him of his rights to enjoy his lawful pursuits [1:238].

Turning to the matter of off-campus demonstrations, the United States Supreme Court handed down a pertinent decision in 1963 [9]. In this instance, 187 Negro high school and college students marched to the grounds of the state capitol in South Carolina to demonstrate their opposition to the state's "discriminatory actions against Negroes" [9:230]. Following "boisterous, loud, and flamboyant" protests by the student demonstrators, policemen arrested them. Convicted of disturbing the peace, the petitioners were given sentences ranging from a $10 fine or five days in jail to a $100 fine or thirty days in jail. The decision was upheld by the state supreme court and was then appealed to the United States Supreme Court. In declaring the off-campus demonstration to be constitutionally sound, the high court said:

> ...It is clear to us that in arresting, convicting, and punishing the petitioners under the circumstances disclosed by this record, South Carolina infringed the petitioners' constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of their grievances.
>
> It has long been established that these First Amendment freedoms are protected by the Fourteenth Amendment from invasions by the States . . . .

Speeches

A significant element of many college demonstrations is the delivering of speeches. In fact, the two activities are usually inseparable. What

right have students to speak on campus and off campus? Do they have a right to listen to other persons speak? What about the matter of extending invitations to guest speakers? These are the subjects of several recent litigious proceedings and of substantial coverage in educational and legal journals and in other publications.

A disparity of opinion exists among current writers. Supporting, as a student right, the freedom of inquiry and expression, Jacobson states that such is essential in order that academic freedom can flourish on campus [34:336]. Paff, Cavala and Berman term freedom of expression as "the fight of the individual for his own recognition as a person" [51:245]. Yet opposition to such a freedom on the contention that it is "unfair and undemocratic because it interferes with the normal educational routine" is espoused by Rosenberg [41:466].

Turning to the matter of using college campuses as public forums, Williamson and Cowan state that:

> ...the right of a student organization to invite an off-campus speaker involves a number of considerations that did not arise in connection with the issue of free speech. One of these is the basic question of the students' freedom to hear. The availability of the campus platform to outside speakers is a measure of the university's involvement with the issues of society as well as a measure of its commitment to freedom for its own students [52:63].

In pointing to the need for institutions to formulate clear goals and policies insofar as the invitation of speakers is concerned, Watson asserts that, without such guidelines, panic and ill-considered action will result if a speaker with an uncommon message is scheduled to appear on campus [45:18]. Conversely, Van Alstyne advocates the abolishment of substantive limitations on guest speakers altogether. He writes:

> Any other policy necessarily expresses a skepticism of student intelligence and fear of the appeal of today's social critics. Both inferences are contrary to the categorical imperatives of a free society [43:342].

Monypenny advises the enforcement of only those restrictions necessary for the "protection of instructional activities from disturbance" -- i.e., regulations pertaining to safety, orderly traffic, and the protection of property against misuse [39:628].

Kreuzer, writing on this subject, states:

> When an invitation is extended to a visiting speaker, there must be a reasonable expectation that the speaker (and his speech) will make a significant contribution to the educational mission of the institution. For visiting professors, recognized experts in various intellectual disciplines, elected public office holders and many, many others the "reasonable expectation" may be easily enough assumed. But when it may not so easily be assumed, when, for example, a self-proclaimed expert or an expert in a field whose connection with the institution's mission is at best tenuous and questionable and at worst nonexistent is about to be invited, serious, mature, informed, disinterested judgment has to be exerted. Students alone may not necessarily have on all occasions the needed judgment. And even if they had it, they would still be but one of at least three groups sharing responsibility for the operation of the institution. Neither students nor any one of the other groups can lay claim to sole authority or responsibility in any one area of college operation at any one time [37:199-200].

In the matter of speakers, the "Joint Statement" avers that

> Students should be allowed to invite and to hear any person of their own choosing. Those routine procedures required by an institution before a guest speaker is invited to appear on campus should be designed only to insure that there is orderly scheduling of facilities and adequate preparation for the event, and that the occasion is conducted in a manner appropriate to an academic community. The institutional control of campus facilities should not be used as a device of censorship. It should be made clear to the academic and

> larger community that sponsorship of guest speakers does not necessarily imply approval or endorsement of the views expressed, either by the sponsoring group or the institution [35:367].

Courts have rendered seven decisions involving the rights of students to speak or to hear speakers on or off campus. Four decisions -- all since 1962 -- involved activities on college campuses. The first is the case of Buckley v. Meng [2] which developed after a disagreement over the use of a Hunter College auditorium in December 1960, by an outside speaker, Jacques Soustelle, a French leader who advocated keeping Algeria as a French territory. Following Soustelle's speech, part of a series of lectures sponsored by the National Review, the president of Hunter College wrote to the editor of the National Review, saying: ". . . these halls are not available for political or other movements or groups in presenting a distinct position or point of view opposed by substantial parts of the public" [2:927].

Moreover, in June 1961, the college formulated its first policy regulating the use of campus facilities. The regulation was challenged by William F. Buckley, Jr. editor of the National Review, on the contention that, while public institutions are not obligated to make their facilities available for non-academic purposes, once the facilities were offered, "the regulations governing the use must meet constitutional standards, in particular, the standards of the First Amendment" [2:928]. Supporting this ground, the New York County Supreme Court said:

> A college should . . . pursue a policy of fostering discussion and the exchange of opinion by providing an open forum for it to all who want to be heard. A college should generate intellectual excitement, it should attempt to awaken the public mind from the torpor and quiescence of accepted and conventional opinion.

> This court . . . forbid[s] Hunter College from denying discussion of public issues from its halls on the ground that it is the voice of a minority or the voice of one not approved by an official acting under the present regulations. The current regulations governing the use of Hunter College's facilities are either unconstitutionally vague or else they embody an unconstitutional principle of selection. In either case, they must be struck down . . .[2:928].

The second case involving an outside speaker on campus is Egan v. Moore [10]. Shortly before the University of Buffalo, a private institution, merged with the State University of New York in 1961 (thereby becoming a public institution), a student organization invited Herbert Aptheker, a Communist, to speak at a campus assembly. Prior to his speaking engagement, the merger of the university with the state system of higher education took place. Aptheker's appearance was blocked by order of the local supreme court on the grounds of various anti-subversive laws and regulations of the state. The decision was reversed, however, by the Appellate Division the following year. The latter decision was phrased, in part, as follows: " . . . the tradition of our great society has been to allow our universities in the name of academic freedom to explore and expose their students to controversial issues without government interference" [10:622]. The court added that merely being a member of the Communist Party does not, within itself, indicate that a person advocates the violent overthrow of the government.

The case of Goldberg v. Regents of University of California [14] focuses on the matter of student speeches on a college campus.

Protest rallies staged at the University of California at Berkeley on March 4 and 5, 1965, were characterized by the use of obscene language, both in the comments delivered orally before different audiences and in the language printed on various placards displayed around campus. Institutional authorities suspended four of the student leaders -- not for demonstrating,

but for the use of vulgar language. Litigation, initiated by the suspended students, resulted in approval of the institution's action. Said the California Court of Appeals:

> The association with an educational institution as a student requires certain minimum standards of propriety in conduct to insure that the educational functions of the institution can be pursued in an orderly and reasonable manner. The limitation here imposed was necessary for the orderly conduct of demonstrations . . . The irresponsible activity of plaintiffs seriously interfered with the University's interest in preserving proper decorum in campus assemblages . . . Conduct involving rowdiness, rioting, the destruction of property, the reckless display of impropriety or any unjustifiable disturbance of the public order on or off campus is indefensible whether it is incident to an athletic event, the advent of spring, or devotion, however sincere, to some cause or ideal [14:472].

The most recent speech case reviewed for this writing was decided by a federal district court in 1968 [6]. In this instance, students and student organizations of the University of North Carolina at Chapel Hill invited two controversial speakers to the campus to address the student body in March 1966. One of the speakers was a self-proclaimed member of the Communist Party U. S. A.; the other had served a federal prison term for unlawfully refusing to answer questions before a subcommittee of the House Un-American Activities Committee. Such persons were barred from using campus facilities for speaking purposes by virtue of a statute known as the "Speaker Ban" law; hence, university officials denied the speakers the privilege of using a campus platform.

In a decision announced by Judge Stanley on February 19, 1968, the court recognized that, while a state is under no obligation to provide a platform for the Communist Party, and while no one has an absolute right

to speak on a college or university campus, " . . . once such institution opens its doors to visiting speakers it must do so under principles that are constitutionally valid" [6:497].

In building to the crux of the decision, the court presented the following commentary on extending invitations to guest speakers:

> We are also aware that when student groups have the privilege of inviting speakers, the pressure of considerations of audience appeal may impel them to so prefer sensationalism as to neglect academic responsibility. Such apparently motivated the plaintiff students during the spring of 1966. If the offering of the sensational becomes their primary objective, the resulting program may not complement the educational purposes of the university. One does not acquire an understanding of important racial problems by listening successively to a Stokeley (sic) Carmichael or an H. Rap Brown and an officer of the Ku Klux Klan. Countering a Herbert Aptheker with an official of the American Nazi Party may furnish excitement for young people, but it presents no rational alternatives and has but dubious value as an educational experience. University students should not be insulated from the ideas of extremists, but there is danger that the voices of reason, throughout the broad spectrum they cover, will remain unheard if the clamor of extremists is disproportionately amplified on university platforms. A more balanced program, unenslaved by sensationalism, but reaching it, too, would not be calculated to evoke legislative response [6:497].

Nevertheless, the court declared the university's regulations, which had been drawn in compliance with the state statute, to be unconstitutionally vague. For example, the regulation barred from the campus forum a "known member of the Communist Party" -- but, the court queried, known to whom and with what degree of certainty? The court also pointed out the ambiguity of the word <u>member</u> as incorporated in the institution's regulations, noting that this conceivably could apply to "front" organizations as well as to the Communist Party itself. Hence, declaratory and injunctive relief was granted to the university students.

Regarding the freedom of expression in the outer community, Monypenny notes that off-campus disciplinary powers of colleges and universities

> ... may be used to stifle expression off campus as well as on campus, and this has happened when university sanctions are imposed in addition to the civil sanctions which the student faces in some of his off-campus activity which comes into conflict with the law [39:629].

Since 1917, three cases have focused on this aspect of student life. First was the case of Samson v. Trustees [22] which arose after Leon Samson delivered a speech at a lecture hall in New York City. For this, Samson was suspended from the university on the following grounds: (1) that, since the academic year had ended shortly before the date of the speech, the university's contract with the student had expired, (2) that the student, who had previously been suspended for creating a disturbance at a campus assembly, was obliged, as a condition to his reinstatement, to "not engage in any activities or take part in any movement which would involve the University in undesirable notoriety," and, having broken that pledge, had forfeited his right to continue his studies, and (3) that it was within the discretion and disciplinary power of the university to refuse the student readmission.

The court ruled on each of the three grounds. The first, it said, was invalid because an institution is obligated to permit a student in good standing to continue his course of studies until graduation. ("In good standing" presumably implied a satisfactory academic average.) The second was invalid because, according to the court, no supporting evidence had been presented by the university as to the earlier stipulation covering the student's future conduct. The case was decided on the third ground. The court held that an implied term of the agreement between the student and the in-

stitution at the time the student matriculated was that the student would conduct himself "in such manner as not to destroy or interfere with the discipline, good order and fair name of the university . . . " [22:204]. The court said that misconduct is action that hinders the educational program of the institution, injures the institution in any way, decreases institutional control of the student body, or diminishes the institution's influence upon its students and the community, and that such acts need not occur on the campus itself in order to constitute a valid reason for disciplinary action [22:204-205]. Hence, Samson's suspension was sustained.

Four years later, again in New York, a court adjudged a case involving an off-campus speech by a college student [21]. In this instance, an Albany Law School student, Jacob M. Goldenkoff, was expelled for having expressed sympathy with the Socialist party, for having circulated Socialist propaganda on campus, and for having made certain inflammatory statements.

A lower court ordered Goldenkoff's reinstatement, but, when appealed by institutional authorities to a higher court, it was held that the institution had acted legally within its scope of power and, furthermore, that in such a case no review of the issue should be made by a court [21:354]. Accordingly, Goldenkoff's expulsion was upheld.

The third case of its kind was Feiner v. New York [13], decided more than a quarter or a century after the Goldenkoff case. When Irving Feiner, a student at Syracuse University, delivered a speech in downtown Syracuse, during which he referred to President Truman as a "bum," to the mayor of Syracuse as a "champagne-sipping bum," and to the American Legion as "Nazi Gestapo agents," [13:317] his audience became restless. When city policemen repeatedly asked Feiner to dispense with the speech, Feiner each time

refused and was subsequently arrested and convicted on a charge of disturbing the peace. In litigation, which reached the United States Supreme Court, it was held that Feiner's arrest and conviction were legitimate -- although the highest court in the land decided the case by a 4 - 3 vote. Notably, Justices Black and Douglas averred, in a dissenting opinion, that the police had shirked their duty in failing to protect Feiner's right to speak [13:327]. Justice Douglas wrote:

> A speaker may not, of course, incite a riot any more than he may incite a breach of the peace by the use of "fighting words" . . . but this record shows no such extremes. It shows an unsympathetic audience and the threat of one man to haul the speaker from the stage. It is against that kind of threat that speakers need police protection. If they do not receive it and instead the police throw their weight on the side of those who would break up the meetings, the police become the new censors of speech. Police censorship has all the vices of the censorship from city halls which we have repeatedy [sic] struck down [13:330-331].

Nevertheless, the majority view favored the police action in this instance and the college student's off-campus speech was declared illegal.

The Right to Write?

"Student publications and the student press are a valuable aid in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus," avers the "Joint Statement" [35:367]. It continues:

> They are a means of bringing student concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues on the campus and in the world at large [35:367].

Prerequisites suggested by the "Joint Statement" for the editorial

freedom of student publications are:

1. Freedom from censorship and advance approval of copy

2. Freedom of student editors and managers to develop their own editorial policies and news coverage

3. Freedom of student editors and managers from arbitrary suspension and removal because of opposition to editorial policy or content [35:367].

The gap between the ideal and the practice apparently is wide. Reportedly, many student publications are subject to administrative review and control through the budget and by censorship before or after publication [52:134].

Only one case specifically relating to college publications has been adjudicated in a court of record [5]. In this instance, Gary Clinton Dickey, editor of Troy State College's student newspaper, The Tropolitan, was suspended on a charge of insubordination. The background of this action is as follows. At the University of Alabama a series of panel discussions with guest speakers was held in March 1967. In conjunction with the meetings, university students published a pamphlet titled "Emphasis 67, A World Revolution." It included brief biographical sketches of the program's participants (Secretary of State Dean Rusk, James Reston of the New York Times, and Professor Robert Scalapino, an authority on Asian politics), excerpts from speeches of such persons as Bettina Aptheker, a Communist, and Stokely Carmichael, president of the Student Nonviolent Coordinating Committee, and portions of articles written by General Earl G. Wheeler, Chairman of the Joint Chiefs of Staff, and other moderates and conservatives. The publication drew heavy criticism from certain state legislators. Subsequently, Frank Rose, president of the university, issued a

statement in support of the students' action.

Shortly thereafter, Dickey wrote an editorial for future publication endorsing Dr. Rose's stand. Advised by the faculty sponsor not to publish the editorial, Dickey appealed to President Ralph Adams of Troy State who, in turn, censored the editorial on the ground that nothing could be published in the Troy student newspaper that was critical of the governor of Alabama or the state's legislature. As a public institution, Troy State was owned by the State of Alabama, and, according to President Adams, no criticism could be made of state officials who were masters of the purse strings.

Dickey therefore did not publish the editorial. Instead, its title ("A Lament for Dr. Rose") was printed in the editorial section of the paper with the word "Censored" printed diagonally across the otherwise empty column. In a series of litigious actions, a federal district court finally ordered Dickey's reinstatement, saying:

> A state cannot force a college student to forfeit his constitutionally protected right of freedom of expression as a condition of his attending a state-supported institution. State school officials cannot infringe on their students' right of free and unrestricted expression as guaranteed by the Constitution of the United States where the exercise of such right does not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." Burnside v. Byars, 363 F. (2d) 744 (1966). The defendants in this case cannot punish Gary Clinton Dickey for his exercise of this constitutionally guaranteed right by cloaking his expulsion or suspension in the robe of insubordination" [5:618].

At the time of this writing (1968), the case is on appeal to a higher court. Barring the reversal of the district court's decision, the Dickey case will remain as a precedent in the right of students to write.

III. PROCEDURES FOR ADMINISTRATIVE ACTION

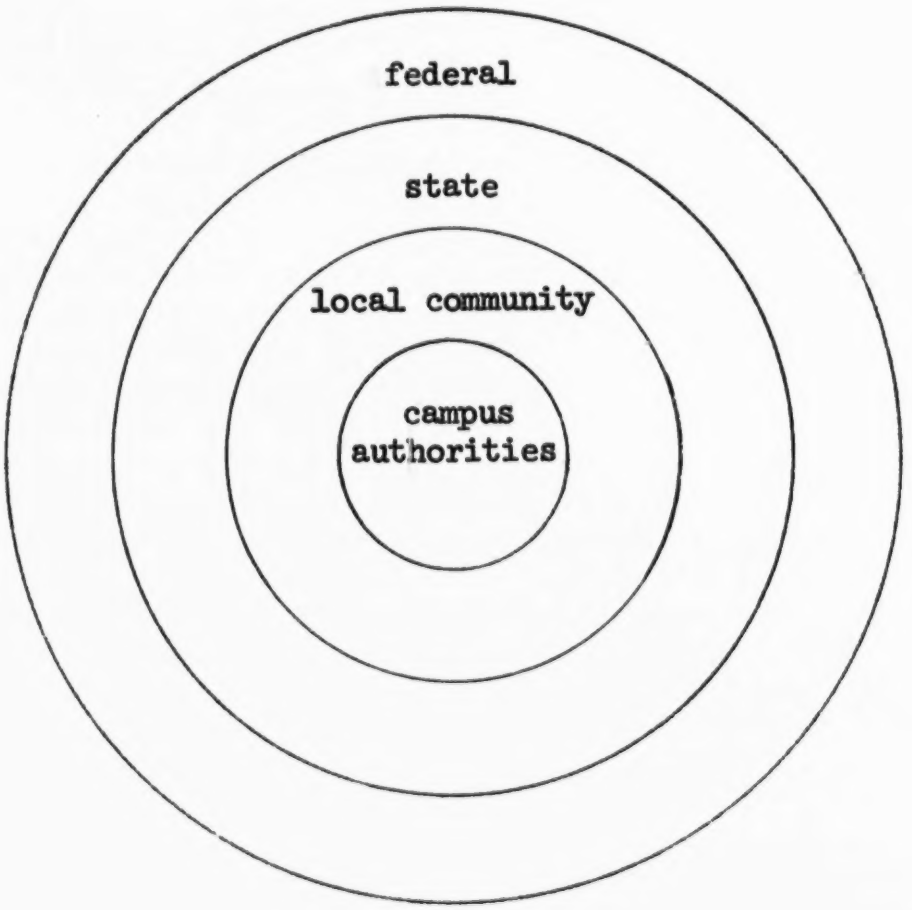
While it is true that in theory the governing board formulates and adopts the official rules and regulations of an educational institution, in practice it is generally the president or a designated administrator, faculty member, or committee that formulates such a structure (subject, then, to board approval). Comments in this section therefore are directed to the administrator or other person(s) whose duty it is to draw up the rules affecting student expression on campus.

Parenthetically it is noted at this point that rules regarding off-campus behavior of students should be avoided altogether except possibly in the areas of (1) college-owned housing located apart from the campus itself and/or (2) official, college-sponsored events off campus. If persons who happen to be college students are believed guilty of violating a public ordinance (e.g., marching on a downtown sidewalk without having obtained an official permit), it is recommended that the disposition of that incident be left to public law enforcement officials. Moreover, the same persons, whether or not apprehended and convicted in a public court, should not be subject to additional penalties for the same off-campus offense at their place of matriculation. Otherwise, college officials might well find themselves entangled in a law suit centering on the question of double jeopardy.

The significant concept here is that students are, above all else, citizens of the outer community and their conduct in the world beyond the campus should be governed by off-campus authorities. An important distinction in this campus-outer community relationship is that, while the campus authorities have no legal base from which to regulate student actions off-

campus, the law enforcement officials of the outer community may exercise controls over student conduct on campus. The latter situation usually occurs only at the request of college officials, and is legal because the local community includes the campus itself. As depicted in Figure I, the campus authorities' realm of power includes campus affairs; the local law enforcement officials have control over all matters within the local community, including campus affairs; the state may control state affairs, but also local and campus affairs; and the federal government may control federal, state, local, and campus affairs. This is, of course, an oversimplification of the nation's legal provinces, but it serves to exemplify the idea that, while assistance may be obtained from local authorities and in turn

FIGURE I



from state and federal authorities, campus officials should leave to civil bodies the policing of student conduct in the areas beyond the campus.

Although it is impossible to list judicially acceptable rules and regulations applicable to all junior colleges for all conceivable campus situations, general guidelines may be drawn on the basis of the foregoing court cases and review of the related literature. General principles of rule-making, areas of legitimate and illegitimate administrative control of student expression, and procedures that must be established for the expeditious and equitable settlement of suspected violations are presented in the remainder of this paper.

General Principles

In drawing up the official rules and regulations of the junior college, administrators should avoid ambiguous statements. Otherwise, as in the "Speaker Ban" case [6], a tribunal may be unable to determine the exact meaning of the regulation or how it shall be applied in a given situation. If it lacks lucidity, a rule or regulation that might otherwise be legitimate cannot long endure judicial scrutiny.

Secondly, a regulation concerning a student act of expression must not in any way reflect discrimination against opposing points of view. To ban a student demonstration or the appearance of a guest speaker on campus because either represents, in the mind of an administrator, a minority point of view or one in conflict with the institution's administration probably would be interpreted by a court as an exercise of administrative censorship in direct opposition to the federal Constitution. Hence, with respect to these matters, administrators should be concerned only with the scheduling

of such events and their orderly transaction. Building into the official regulations of the institution the power of approving or rejecting student expression on the basis of subject matter alone must be avoided. At the most, an institution might wish to issue, as a routine procedure, a statement to the effect that it does not necessarily support the ideas or beliefs projected by the student(s) or student organization(s) at the scheduled event.

A third overall conclusion is that rules should not be directed to a generalized area. Attempting to control campus order and discipline under the general statement that "conduct must be becoming to a student of State Junior College" is unrealistic and evasive. Administrators must decide precisely what kinds of conduct are unacceptable and must so designate them. If it is decided that students have the right to speak freely on campus, but that vulgar language will not be permitted, it should be so stated. If it is recognized that students have a right to demonstrate on campus, but that demonstrations in classroom buildings, the library, or the president's office would be disruptive to the normal educational routines of the institution, it should be so stated.

Fourthly, all official rules and regulations of student acts of expression should be widely disseminated at the institution. Probably the most accessible and commonly used means is the college catalog. At any rate, it is an obligation of the junior college administrator to see that the student body has an opportunity to know the institution's policies.

In addition to the foregoing principles, which are products of adjudication or of literary advocations, two types of due process must be provided for in the official administrative structure of the junior college: sub-

stantive due process and procedural due process. The first, which in a sense is an expansion of the general principles stated above, includes the "substance" upon which the institution regulates the student expressions. The second is the manner in which the guilt or innocence of suspected violators is determined.

Substantive Due Process

According to Jacobson, substantive due process is

> A general proposition which holds that a rule or regulation must be reasonable and must bear a rational relationship to a socially approved goal. Furthermore, the means adopted to achieve the goal must not only be recognizably relevant to its attainment but must also be socially approved [34:197].

As for student speeches on campus, colleges may legitimately designate the place and time of the event, the standard of language acceptable to the academic community, and the procedures by which the event may be slated. The latter may include the requirement that the sponsoring organizations submit ample information about the proposed program and its speakers to enable college officials to decide upon the proper place(s) for the activity and other related factors. If a proposed student activity is found to be in conflict with another academic function already on the college calendar, the latter may take precedence, but this procedure cannot be used as a means of censoring student activities.

Except when it is unmistakably evident that a clear and present danger exists, or a riot or disorder is imminent, or that there is an immediate threat to public safety, peace, or order, a public college cannot restrict the right of its students to assemble peaceably. Demonstrations on campus may be restricted to certain areas but, to reiterate an earlier point, they

cannot be banned from the campus as a whole.

Student publications may not be censored short of a clear showing that the writing materially and substantially interferes with the discipline of the college. The institution, for its own protection, might wish to divorce itself financially from the student publication(s), thus placing the ultimate responsibility for the printed word on the shoulders of the student writers. In any case, the freedom to express one's ideas or beliefs includes using the medium of the printed word.

Procedural Due Process

Prior to the 1960's, the courts had prescribed little with regard to college standards of procedural due process. One of the most succinct definitions of procedural due process, written with an educational institution in mind, is Jacobson's. He describes it as including "written notice of charges, opportunity to defend before an impartial judge or tribunal, the right of confrontation and cross-examination, [and] the right of representation by counsel or friend of court" [34:197]. He adds that, although the right to appeal to a higher authority is not yet recognized as a requirement of due process, "[it] is in fact a generally accepted principle in the administration of justice" [34:197].

An institution such as a public junior college must meet the following minimal standards of procedural due process as outlined in the Dixon case [7]:

1. the giving of notice, including a statement of the charges and grounds upon which expulsion would be justified; and

2. the providing for a hearing in which (a) the accused student has an opportunity to defend himself against the charges and to introduce oral

and/or written testimony of witnesses on his behalf, and (b) the accused student is informed of the names of witnesses who have testified against him and a written or oral report of the statements so offered.

The Dixon standards were amplified by a 1967 decision, Esteban v. Central Missouri State College [11], in which the court stipulated that a written statement of the charges must be furnished to each student plaintiff "at least 10 days prior to the date of the hearing . . ." [11:651].

It should be noted that there are generally two kinds of hearings: formal and informal. A formal hearing is one in which both sides are represented by lawyers and is usually employed at a college only when a student faces possible expulsion or lengthy suspension from the institution if found guilty of the charge. An informal hearing is more commonly used. Though not essential at an informal hearing, and only if the student so desires, a lawyer may be allowed to attend for the purpose of advising the student on certain procedures and statements. In an informal hearing, a lawyer should not be permitted to cross-examine or otherwise participate in the proceedings, although it is not beyond reason to permit him to summarize the student's case for the hearing committee. If a more active legal role is desired by the student, a formal hearing may be requested.

A complete transcript of the proceedings should be kept in a formal hearing. This may be taken either in writing or by tape recording. While a complete transcript would also be useful in an informal hearing, it is not essential. In the latter instance, a summary of the proceedings (including the charge(s) against the student, major points brought out in the hearing, and the decision of the committee) would suffice.

Implementation

Providing for procedural due process is a much more onerous task at a junior college than the casual observer might imagine. For example, unlike a chancery court, a college hearing committee or administrator does not have the legal power to compel witnesses to attend hearings and/or to offer testimony for or against a student. It can invite and encourage such a contribution by members of the educational community, but it cannot compel such action.

Moreover, none but the wealthiest of junior colleges could afford in each and every instance the legal expertise (either in terms of lawyers' fees or its own professional staff time) necessitated by such standards as prescribed by the Dixon case. But such a procedure is not necessary in each and every instance of college disciplinary action, even in light of the Dixon edict. As further noted in that case, procedures for dismissing college students are not analogous to criminal proceedings nor could they be without imposing unreasonable burdens on the educational functions of the college. It would appear, therefore, that an informal hearing (before the Dean of Students, say) would be sufficient in a junior college disciplinary proceeding. A vast number of disciplinary encounters are handled swiftly and justly in an informal setting. No lawyer is consulted. No hearing board is convened. No detailed transcript is compiled. And seldom does the student wish to take the matter to a higher level of review. For the sake of the few who do wish to have their cases reviewed by a higher institutional or judicial body, however, procedural due process must be provided. The system must be available to all students if an appeal is desired by any.

Thus, even at an informal hearing, records of the proceedings should be made and filed for future reference. (Such a record should not be made a permanent part of a student's record and, as suggested by the "Joint Statement" [35:366], disciplinary records should be destroyed periodically -- perhaps within six months after the student has withdrawn from the institution or has been graduated.)

In cases where a student faces possible expulsion or lengthy suspension, he should be accorded full protection under the Dixon standards of due process. As suggested by Heyman [32:79], written notice should be given to the student far enough in advance of the hearing date for him to seek legal counsel and/or prepare his defense. A minimum of ten days notice should suffice [11, 44:11]. The hearing, unless otherwise requested by the student, should be a public hearing, Heyman contends [32:79]. The student should be permitted to obtain counsel -- and, furthermore, the institution should do all it can to see that he obtains a lawyer if he so wishes. (Indigent students can sometimes obtain assistance from local lawyers or law students. Also, on occasion, the American Civil Liberties Union offers assistance to students in these matters. The student might wish to have someone other than a lawyer represent him or to have no one at all, but it is an obligation of the institution to see that, if he wants legal counsel, he gets it.) The hearing should be before a committee -- consisting of perhaps five faculty members, elected by the faculty senate, serving staggered five-year terms [44:11], and possibly including students as well [35:368]. Evidence should be limited to written or verbal testimony offered during the hearing, and subject to cross-examination by the student or his counsel. The student should not be requested to offer self-incriminating evidence; the burden

of proof rests with the person(s) bringing the charges. A full record should be made of the proceedings. Upon conviction, the student should be "sentenced" by an administrator of the college.

The overriding principle of procedural due process is that the system must reflect a spirit of fairness for all. This is projected by Justice Frankfurter of the United States Supreme Court in a concurring opinion written in 1951. According to him, courts review each case in light of

> The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished -- these are some of the considerations that must enter into the judicial judgment [18:163].

In matters relating to the disciplining of students, junior college administrators must act accordingly.

Conclusion and Recommendation

With a spirit of reasonableness on the part of administrators, students, and others in the academic community, just rules and regulations regarding freedom of expression on campus can be formulated and enforced. In addition to the legal principles outlined in this paper, it is recommended that junior college administrators follow the aegis of the "Joint Statement" in formulating or revising regulations at their respective institutions.

The rising voice of student dissent need not strike fear in the hearts of conscientious junior college administrators, for, in the words of Harold Howe, Commissioner of Education,

> ... there is a constructive side to the present dissent, a spirit and an attitude that can be built upon to im-

> prove our society and specifically improve the conduct of education . . . .
>
> The desire to become involved, to participate in the decision-making process, is a desire for responsibility [53:3-4].

Such a desire, if properly channelled by the administrator of the junior college, can indeed result in greater academic freedom for all. As the educational leader of the junior college community, the administrator is obligated to work toward this end.

APPENDIX

"Joint Statement on Rights and Freedoms of Students," AAUP Bulletin, LIII (Winter, 1967), pp. 363-368. [Reprinted by permission of AAUP].

Preamble

Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. Free inquiry and free expression are indispensable to the attainmemt of these goals. As members of the academic community, students should be encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth. Institutional procedures for achieving these purposes may vary from campus to campus, but the minimal standards of academic freedom of students outlined below are essential to any community of scholars.

Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility.

The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the academic community. Each college and university has a duty to develop policies and procedures which provide and safeguard this freedom. Such policies and procedures should be developed at each institution within the framework of general standards and with the broadest possible participation of the members of the academic community. The purpose of this statement is to enumerate the essential provisions for student freedom to learn.

I. Freedom of Access to Higher Education

The admissions policies of each college and university are a matter of institutional choice provided that each college and university makes clear the characteristics and expectations of students which it considers relevant to success in the institution's program. While church-related institutions may give admission preference to students of their own persuasion, such a preference should be clearly and publicly stated. Under no circumstances should a student be barred from admission to a particular institution on the basis of race. Thus, within the limits of its facilities, each college and university should be open to all students who are qualified according to its admission standards. The facilities and services of a college should be open to all of its enrolled students, and institutions should use their influence to secure equal access for all students to public facilities in the local community.

II. In the Classroom

The professor in the classroom and in conference should encourage free discussion, inquiry, and expression. Student performance should be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards.

A. Protection of Freedom of Expression. Students should be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.

B. Protection Against Improper Academic Evaluation. Students should have protection through orderly procedures against prejudiced or capricious academic evaluation. At the same time, they are responsible for maintaining standards of academic performance established for each course in which they are enrolled.

C. Protection Against Improper Disclosure. Information about student views, beliefs, and political associations which professors acquire in the course of their work as instructors, advisers, and counselors should be considered confidential. Protection against improper disclosure is a serious professional obligation. Judgments of ability and character may be provided under appropriate circumstances, normally with the knowledge or consent of the student.

III. Student Records

Institutions should have a carefully considered policy as to the information which should be part of a student's permanent educational record and as to the conditions of its disclosure. To minimize the risk of improper disclosure, academic and disciplinary records should be separate, and the conditions of access to each should be set forth in an explicit policy statement. Transcripts of academic records should contain only information about academic status. Information from disciplinary or counseling files should not be available to unauthorized persons on campus, or to any person off campus without the express consent of the student involved except under legal compulsion or in cases where the safety of persons or property is involved. No records should be kept which reflect the political activities or beliefs of students. Provision should also be made for periodic routine destruction of noncurrent disciplinary records. Administrative staff and faculty members should respect confidential information about students which they acquire in the course of their work.

IV. Student Affairs

In student affairs, certain standards must be maintained if the freedom of students is to be preserved.

A. Freedom of Association. Students bring to the campus a variety of interests previously acquired and develop many new interests as members of the academic community. They should be free to organize and join associations to promote their common interests.

1. The membership, policies, and actions of a student organization usually will be determined by vote of only those persons who hold bona fide membership in the college or university community.

2. Affiliation with an extramural organization should not of itself disqualify a student organization from institutional recognition.

3. If campus advisers are required each organization should be free to choose its own adviser, and institutional recognition should not be withheld or withdrawn solely because of the inability of a student organization to secure an adviser. Campus advisers may advise organizations in the exercise of responsibility, but they should not have the authority to control the policy of such organizations.

4. Student organizations may be required to submit a statement of purpose, criteria for membership, rules of procedures, and a current list of officers. They should not be required to submit a membership list as a condition of institutional recognition.

5. Campus organizations, including those affiliated with an extramural organization, should be open to all students without respect to race, creed, or national origin, except for religious qualifications which may be required by organizations whose aims are primarily sectarian.

B. Freedom of Inquiry and Expression.

1. Students and student organizations should be free to examine and to discuss all questions of interest to them, and to express opinions publicly and privately. They should always be free to support causes by orderly means which do not disrupt the regular and essential operation of the institution. At the same time, it should be made clear to the academic and the larger community that in their public expressions or demonstrations students or student organizations speak only for themselves.

2. Students should be allowed to invite and to hear any person of their own choosing. Those routine procedures required by an institution before a guest speaker is invited to appear on campus should be designed only to insure that there is orderly scheduling of facilities and adequate preparation for the event, and that the occasion is conducted in a manner appropriate to an academic community. The institutional control of campus facilities should not be used as a device of censorship. It should be made clear to the academic and larger community that sponsorship of guest speakers does not necessarily imply approval or endorsement of the views expressed, either by the sponsoring group or the institution.

C. Student Participation in Institutional Government. As constituents of the academic community, students should be free, individually and collectively, to express their views on issues of institutional policy and on matters of general interest to the student body. The student body should have clearly defined means to participate in the formulation and application of institutional policy affecting academic and student affairs. The role of the student government and both its general and specific responsibilities should be made explicit, and the actions of the student government within the areas of its jurisdiction should be reviewed only through orderly and prescribed procedures.

D. Student Publications. Student publications and the student press are a valuable aid in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues on the campus and in the world at large.

Whenever possible the student newspaper should be an independent corporation financially and legally separate from the university. Where financial and legal autonomy is not possible the institution, as the publisher of student publications, may have to bear the legal responsibility for the contents of the publications. In the delegation of editorial responsibility to students the institution must provide sufficient editorial freedom and financial autonomy for the student publications to maintain their integrity of purpose as vehicles for free inquiry and free expression in an academic community.

Institutional authorities, in consultation with students and faculty, have a responsibility to provide written clarification of the role of the student publications, the standards to be used in their evaluation, and the limitations on external control of their operation. At the same time, the editorial freedom of student editors and managers entails corollary responsibilities to be governed by the canons of responsible journalism, such as the avoidance of libel, indecency, undocumented allegations, attacks on personal integrity, and the techniques of harassment and innuendo. As safeguards for the editorial freedom of student publications the following provisions are necessary:

1. The student press should be free of censorship and advance approval of copy, and its editors and managers should be free to develop their own editorial policies and news coverage.

2. Editors and managers of student publications should be protected from arbitrary suspension and removal because of student, faculty, administrative, or public disapproval of editorial policy or content. Only for proper and stated causes should editors and managers be subject to removal and then by orderly and prescribed procedures. The agency responsible for the appointment of editors and managers should be the agency responsible for their removal.

3. All university published and financed student publications should explicitly state on the editorial page that the opinions there expressed are not necessarily those of the college, university or student body.

V. Off-Campus Freedom of Students

A. Exercise of Rights of Citizenship. College and university students are both citizens and members of the academic community. As citizens, students should enjoy the same freedom of speech, peaceful assembly, and right of petition that other citizens enjoy and, as members of the academic community, they are subject to the obligations which accrue to them by virtue of this membership. Faculty members and administrative officials should insure that institutional powers are not employed to inhibit such intellectual and personal development of students as is often promoted by their exercise of the rights of citizenship both on and off campus.

B. Institutional Authority and Civil Penalties. Activities of students may upon occasion result in violation of law. In such cases, institutional officials should be prepared to apprise students of sources of legal counsel and may offer other assistance. Students who violate the law may incur penalties prescribed by civil authorities, but institutional authority should never be used merely to duplicate the function of general laws. Only where the institution's interests as an academic community are distinct and clearly involved should the special authority of the institution be asserted. The student who incidentally violates institutional regulations in the course of his off-campus activity, such as those relating to class attendance, should be subject to no greater penalty than would normally be imposed. Institutional action should be independent of community pressure.

VI. Procedural Standards in Disciplinary Proceedings

In developing responsible student conduct, disciplinary proceedings play a role substantially secondary to example, counseling, guidance, and admonition. At the same time, educational institutions have a duty and the corollary disciplinary powers to protect their educational purpose through the setting of standards of scholarship and conduct for the students who attend them and through the regulation of the use of institutional facilities. In the exceptional circumstances when the preferred means fail to resolve problems of student conduct, proper procedural safeguards should be observed to protect the student from the unfair imposition of serious penalties.

The administration of discipline should guarantee procedural fairness to an accused student. Practices in disciplinary cases may vary in formality with the gravity of the offense and the sanctions which may be applied. They should also

take into account the presence or absence of an Honor Code, and the degree to which the institutional officials have direct acquaintance with student life, in general, and with the involved student and the circumstances of the case in particular. The jurisdictions of faculty or student judicial bodies, the disciplinary responsibilities of institutional officials and the regular disciplinary procedures, including the student's right to appeal a decision, should be clearly formulated and communicated in advance. Minor penalties may be assessed informally under prescribed procedures.

In all situations, procedural fair play requires that the student be informed of the nature of the charges against him, that he be given a fair opportunity to refute them, that the institution not be arbitrary in its actions, and that there be provision for appeal of a decision. The following are recommended as proper safeguards in such proceedings when there are no Honor Codes offering comparable guarantees.

A. Standards of Conduct Expected of Students. The institution has an obligation to clarify those standards of behavior which it considers essential to its educational mission and its community life. These general behavioral expectations and the resultant specific regulations should represent a reasonable regulation of student conduct but the student should be as free as possible from imposed limitations that have no direct relevance to his education. Offenses should be as clearly defined as possible and interpreted in a manner consistent with the aforementioned principles of relevancy and reasonableness. Disciplinary proceedings should be instituted only for violations of standards of conduct formulated with significant student participation and published in advance through such means as a student handbook or a generally available body of institutional regulations.

B. Investigation of Student Conduct.

1. Except under extreme emergency circumstances, premises occupied by students and the personal possessions of students should not be searched unless appropriate authorization has been obtained. For premises such as residence halls controlled by the institution, an appropriate and responsible authority should be designated to whom application should be made before a search is conducted. The application should specify the reasons for the search and the objects or information sought. The student should be present, if possible, during the search. For premises not controlled by the institution, the ordinary requirements for lawful search should be followed.

2. Students detected or arrested in the course of serious violations of institutional regulations, or infractions of ordinary law, should be informed of their rights. No form of harassment should be used by institutional representatives to coerce admissions of guilt or information about conduct of other suspected persons.

C. Status of Student Pending Final Action. Pending action on the charges, the status of a student should not be altered, or his right to be present on the campus and to attend classes suspended, except for reasons relating to his physical or emotional safety and well-being, or for reasons relating to the safety and well-being of students, faculty, or university property.

D. Hearing Committee Procedures. When the misconduct may result in serious penalties and if the student questions the fairness of disciplinary action taken against him, he should be granted, on request, the privilege of a hearing before a regularly constituted hearing committee. The following suggested hearing committee procedures satisfy the requirements of procedural due process in situations requiring a high degree of formality:

1. The hearing committee should include faculty members or students, or, if regularly included or requested by the accused, both faculty and student members. No member of the hearing committee sho is otherwise interested in the particular case should sit in judgment during the proceeding.

2. The student should be informed, in writing, of the reasons for the proposed disciplinary action with sufficient particularity, and in sufficient time, to insure opportunity to prepare for the hearing.

3. The student appearing before the hearing committee should have the right to be assisted in his defense by an adviser of his choice.

4. The burden of proof should rest upon the officials bringing the charge.

5. The student should be given an opportunity to testify and to present evidence and witnesses. He should have an opportunity to hear and question adverse witnesses. In no case should the committee consider statements against him unless he has been advised of their content and of the names of those who made them, and unless he has been given an opportunity to rebut unfavorable inferences which might otherwise be drawn.

6. All matters upon which the decision may be based must be introduced into evidence at the proceeding before the hearing committee. The decision should be based solely upon such matter. Improperly acquired evidence should not be admitted.

7. In the absence of a transcript, there should be both a digest and a verbatim record, such as a tape recording, of the hearing.

8. The decision of the hearing committee should be final, subject only to the student's right of appeal to the President or ultimately to the governing board of the institution.

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